

# USDA



## Farm Service Agency

August 2004

### Kentucky FSA Guaranteed Lender News

#### OFFSET ON GUARANTEES AFTER FINAL LOSS CLAIM

2-FLP Handbook, Amendment 18, has recently been issued and primarily covers changes involving offset of federal payments to guaranteed borrowers. As a reminder, this can only come into play after payment of a final loss claim on a guarantee approved on or after July 20, 2001. The offset will not be applicable if the borrower(s)' debts have been discharged in bankruptcy. We will attempt to summarize some of the major issues, as they affect guaranteed lenders, as follows:

- You must now include in the initial guarantee application narrative the name, social security number and address of any co-borrowers or co-signers.
- The same information as above is required for these parties at the time of restructuring of an existing guaranteed loan or at the time of submission of a final loss claim.
- For guarantees approved on or after July 20, 2001, FSA National Office concurrence must be given to any liable party's release of liability. Such an action must be clearly in the best interest of the guaranteed lender and FSA.
- Again, only on the cases involving the July 20, 2001, application form, you may not issue an IRS-1099 C on the guaranteed portion of the loan. Once FSA has concluded its collection efforts, we will cancel any remaining balance of the guaranteed portion of the loan and notify IRS accordingly. You may make your own decision of the non-guaranteed portion of the loan after the three-year recovery period following payment of the final loss claim.

The offsets will include both administrative offsets of FSA program payments and Treasury offsets of all Federal payments to liable parties.

#### **"FARM LOANS ARE GOOD BUSINESS -- WE GUARANTEE IT!!"**

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## State Executive Director Comments

A farmer related earlier this year a story from his youth in which a rodeo bronc rider was given the advice before a ride to “hold on real tight now!” The farmer said this advice was very appropriate the week before when soybeans were up 40 cents one day and down 50 cents the next day. He went on to say that a few days before he was sitting inside a tractor cab planting 16 rows of corn at a time, watching a monitor telling him the acres per hour, miles per hour, seeds per acre and making it look easy. He also said this was the earliest he had ever planted corn. He said he was in the same field that his father finished planting on June 9th in the early 1960’s using a cabless John Deere 3010 and a four-row planter. At the time of his father’s harvest, he stated that the farm was probably yielding 80 or 90 bushels an acre, which would be considered a crop failure today. The farmer made the statement that in the past five years his cell phone went from being handy to indispensable.

These observations are not unique to this one farmer. We are definitely living in a changing world. What will the next five years bring? Hold on real tight!

## LINE OF CREDIT (LOC) CEILINGS

We have seen several cases recently where the FSA guaranteed LOC ceiling was exceeded, sometimes by a substantial amount. In cases where the funds are advanced and repaid within the same day, we will claim “no harm-no foul”. In other cases however with the exception of authorized emergency or protective advances, the amount of the overage plus the interest accrued on this amount will be deducted from any possible loss claim. The case will also be assessed to determine whether the additional advance(s), just like a separate loan, may have endangered the guaranteed loan(s) as a whole.

The LOC ceiling is just that - a ceiling. It is to be abided by, again with the exception of cases involving emergency or protective advances.



**Jeffery S. Hall**  
**State Executive Director**

## REAL ESTATE APPRAISALS INVOLVING GUARANTEES

The FSA National Office has advised us, that per USPAP, FSA is to be listed as an intended user on all real estate appraisals involving FSA loan guarantees. Please advise the appraisers you utilize on guaranteed loans, accordingly.

## SERVICING ALTERNATIVES FOR GUARANTEES

Sometimes there are unforeseen circumstances that prevent the timely payment of loan accounts. In such instances, the FSA has the ability to allow rescheduling/reamortization of guaranteed accounts with the guarantee intact. A credit report must be run on the borrower, a positive cash flow must be shown and it must be a viable operation in all regards. The principal and interest balances may be amortized as a new principal amount.



## SERVICING ALTERNATIVES FOR GUARANTEES (continued from Page 3)

The debt restructuring term limits are 40 years, less the existing guarantees's age, on Farm Ownership loans and 15 years on the term Operating loans. You should take into account the age and condition of chattel security when considering the proper length of the rescheduled Operating loan. Lines of credit may also be rescheduled, but in doing so are shut off as to future advances. They may be rescheduled over a period not to exceed seven years from the date of rescheduling or ten years from the date of the original note, whichever is less.

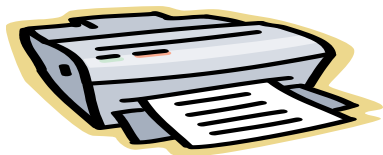
If the loan currently is on Interest Assistance, you must obligate an additional subsidy amount if the principal balance is increased by restructuring the loan and capitalizing interest or if there is an extension of the loan term. In the case of capitalized interest, the restructuring is subject to the availability of new interest assistance funds. All borrowers are subject to a ten-year limit as to interest assistance.

## LENDER LIQUIDATION PLAN

Once the decision has been made to liquidate an FSA guaranteed loan account, the lender must submit a liquidation plan to the appropriate FSA farm loan team within 30 days. In many cases, this will be with the borrower's cooperation and can be very concise. The plan must be in writing and must include the following:

- A current financial statement from all

liable parties, a copy of the bankruptcy schedules or the bankruptcy discharge. In a case where the borrower is uncooperative, you should complete a lien search and obtain a credit report, along with any other financial information available.



## LENDER LIQUIDATION PLAN (continued)

- A proposed method of maximizing collection of the debt, including pursuit of a personal judgment and/or garnishment of wages. We only want to pursue these avenues when there is a real likelihood of additional collections.

- A proposal as to the pursuit of legal action concerning the conversion of guaranteed loan security, if this is applicable. Again, if there are no means to retrieve security proceeds from sources other than the borrower and he has no means to make restitution, we may agree to drop the matter. We need specific details of this issue on a case-by-case basis.

- Any proposal to release an obligated party of liability must be addressed according to 2-FLP, Paragraph 361. Again, this must have the concurrence of the FSA State Executive Director. This has occasionally come up when the borrower proposes a workout agreement in lieu of foreclosure. Such a release is not probable on loans made after July 20, 2001, as these loans will be subject to U.S. Treasury offset of future federal benefits if there is a loss to the government. Releases on these accounts must be approved by the FSA National Office.

An independent appraisal must be provided on all FSA guaranteed loan security, along with a calculation of the security's net recovery value per 2-FLP, Exhibit 10. The appraisal may be waived if the bankruptcy trustee is handling the liquidation and we are utilizing the court-approved values. We may also waive a chattel appraisal if the lender's normal method of liquidation rarely results in receipt of less than market value for livestock and equipment. Finally, the appraisal is not required if we know the debt is being paid in full and no release is made until there is verification of the final payment.

- An estimate of the time necessary to complete the liquidation.

## LENDER LIQUIDATION PLAN (continued)

- An estimated loss claim if the liquidation is expected to exceed 90 days. Some cases won't show losses due to the loan security's value.
- An estimate of reasonable liquidation expenses. This does not have to be exact and doesn't limit the actual expenses that will be honored in a possible loss claim.
- An estimate of any protective advances that may be necessary to either allow liquidation or protect the lender's interest until completion of liquidation.

These issues, as applicable, need to be addressed in as short a form as possible so that we may either concur or advise of problems with the plan. Our real problem with this matter in the past is not in disagreeing with the lender's method of liquidation, but rather in the lack of written documentation. As in many other matters, you should note that Preferred Lenders will abide by their approved Credit Management System when it is in conflict with 2-FLP.

## SUBSTITUTION OF LENDERS

A guaranteed loan borrower may move his loans from one lender to another with FSA's concurrence.

The original lender must agree to assign their notes and security instruments to the new lender in a legally acceptable manner. The new lender must also agree to assume the servicing responsibility of the entire loan(s) and execute a lender's agreement if one is not in effect.

The loan(s) that have been sold on the secondary market require that the holder get written notice of the substitution. Also, an interest assistance payment (if applicable) must be requested by the original lender through the date of the substitution. The new lender will make a subsidy claim for the balance of the year at the normal review date.

The FSA Finance Office will be notified of the change in lenders by the use of Form RD-1980-42.



### Kentucky Guaranteed Lender News is published by

Kentucky FSA State Office  
Farm Loan Program Branch  
771 Corporate Drive, Ste. 100  
Lexington KY 40503-5478  
Telephone: (859) 224-7333  
Fax: (859) 224-7432  
E-mail: kyfsaso@ky.usda.gov

### State Office Contacts

Jeffery S. Hall, State Executive Director  
Jeff.Hall@ky.usda.gov

James B. Dunsmore, Farm Loan Chief  
Butch.Dunsmore@ky.usda.gov

Mitchell W. Whittle, Farm Loan Specialist  
Mitch.Whittle@ky.usda.gov

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